

REMARKS / ARGUMENTS

The present application includes pending claims 1-36, of which claims 1-27 were previously presented and claims 28-36 are newly added system claims. Claims 1-27 have been amended to clarify the language to further prosecution without adding new matter. Claim 18 has been amended to properly depend on claim 17 to remove the Examiner's informalities objection. The Applicant has amended claims 5, 14, 23 to properly depend on the respective correct dependent claims for proper antecedent basis to overcome the rejection under 35 USC 112, second paragraph as being indefinite and lack of antecedent basis. Claims 1-27 are rejected under 35 USC 103(a) as allegedly being unpatentable over Yin et al. (US 5,982,748).

The Applicant traverses the rejections and submits arguments with respect to claims 1-36 and respectfully submits that the claims define patentable subject matter.

I. Removal of Objection To Claim 18

Claims 18 is objected to because claim 18 is dependent on claim 18. The Applicant has amended claim 18 to properly depend on claim 17 and to remove the informalities objection. The Applicant respectfully submits claim 18 for further prosecution.

II. Removal of Rejections Under 35 USC §112 To Claims 5, 14 and 23

Claims 5, 14, 23 are rejected under 35 USC § 112, second paragraph as being indefinite, for failing to particularly point out and distinctly claim the subject matter with sufficient antecedent basis. The Applicant has amended claims 5, 14 and 23 to properly depend on respective dependent claims 2, 11 and 17 for proper antecedent basis. The Applicant requests the rejections under 35 USC § 112, second paragraph be withdrawn.

III. Arguments to Rejections Under 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teaching. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

See MPEP at § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a *suggestion or motivation in the reference to do so*'" (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP § 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion..., citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999).

Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

A. The Proposed Reference By Yin Does Not Render Claims 1-27 Obvious Or Unpatentable

The Applicant turns to the rejection of claims 1-27 by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Yin et al. (US 5,982,748 herein referred to as Yin).

A (1) Argument To Rejections Of Independent Claims 1, 10, 19

With regard to claims 1, 10 and 19, on page 2 and 3 ¶[7] of the Office Action, the Examiner concedes that Yin does not expressly disclose a hybrid wired/wireless network and an access point, but asserts that:

"Yin discloses a method for providing network management in a local area network, the method comprising: receiving from at least one of a first access point and a first switch, a first messaging protocol message containing quality of service (QoS) information (see column 5, lines 51-55, where **a first messaging protocol message is considered a node sending a connection request** containing QoS requirements to another node, where the node can be a switch see column 4, lines 29-34); responsive to said first messaging protocol message, determining at least a minimum QoS level for operation of at least one of said first switch, said first access point, a second access point, and a second switch (see column 3, lines 29-35, where the CAC of

node in Fig. 1 receiving the request will determine at least a minimum QoS requirement for the new connection request from first switch and column 5, lines 55-58 further describing a determining of the QoS parameters associated with the requested connection from a first switch); and distributing QoS information corresponding to said determined at least a minimum QoS level to at least one of said first switch, said first access point, said second access point and said second switch, using a second messaging protocol message (see column 6, lines 27-35, where QoS information (i.e. second. protocol message QoS connection request) is sent to a second switch). Although the system disclosed by Yin shows substantial features of the claimed invention (discussed above), it does not expressly disclose a hybrid wired/wireless network and an access point...Yin discloses that **the node may be any network device capable of directing various data flows across a port.** ”

The Applicant traverses the rejections to claims 1-27 under 35 U.S.C. § 103(a) and submits that Yin does not teach or disclose at least the limitation of **“receiving from one or both of a first access point and/or a first switch, a first messaging protocol message containing quality of service (QoS) information, responsive to said first messaging protocol message, determining at least a minimum QoS level for operation of one or more of said first switch, said first access point, a second access point, and a second switch; and distributing QoS information corresponding to said determined at least a minimum QoS level to one or more of said first switch, said first access point, said second access point and/or said second switch, using a**

second messaging protocol message" as recited in the amended independent claim 1.

Firstly, the Applicant submits that Yin teaches a different network control using "control admission of connection request" (see Yin's title). Nevertheless, the Examiner on page 3 of the Office Action asserts that Yin allegedly teaches "**a first messaging protocol message is considered a node sending a connection request containing QoS requirements to another node**". The Examiner thus asserts that Yin **allegedly teaches "a connection request" being "a messaging protocol message"**. It can be inferred that the Examiner asserts that Yin **allegedly teaches "a messaging protocol message is received by a node from another node"**. Furthermore, the Examiner asserts that "Yin discloses that the node may be any network device capable of directing various data flows across a port, ...**a node could be an access point** for wireless implementation." (see Office Action page 3)

The Applicant traverses the validity of the assertions. However, even if the alleged assertions were true, which the Applicant asserts they are not, Yin at least does not teach "**receiving from one or both of a first access point and/or a first switch, a first messaging protocol message containing quality of service (QoS) information**" as recited by the Applicant in amended claim 1.

The Applicant submits that Yin teaches a connection request is received by a node (from another node). For example, Yin in col 3 lines 28-11 states:

".. a new connection request is received by a node in the network, the CAC determines whether a particular link or links can accept the new connection."

Therefore, if a connection request is received by a node (from another node), it would be true that multiple connection requests would have be received from multiple nodes. Based on this logic, Yin would teach receiving **"at least two connection requests"** in the Applicant's amended claim 1.

For example, the Applicant claim 1 recites **"receiving from one or both of a first access point and a first switch, a first messaging protocol message containing quality of service (QoS) information"**. If applying the alleged Yin's teaching that "a request connection is a messaging protocol message", then Yin would teach at least **two messaging protocol messages** (a first connection request from a first access point and a second connection request from a first switch). Accordingly, applying Yin's teaching would result in receiving **"two messaging protocol messages"** and would contradict the Applicant's teaching of **"a first messaging protocol message"** as recited in the amended claim 1.

Therefore, the Applicant submits that Yin's network control and Yin's alleged teachings **does not** result in teaching at least the limitation of **"receiving from one or both of a first access point and/or a first switch, a first**

messaging protocol message containing quality of service (QoS) information" as recited in the amended claim 1 by the Applicant.

Secondly, the Applicant further submits that Yin does not teach "responsive to said first messaging protocol message, **determining at least a minimum QoS level for operation of one or more of said first switch, said first access point, a second access point, and/or a second switch**" as recited by the Applicant. Yin instead teaches "**determining the allocated bandwidth** of a particular type of service specified in the system in response to a connection request", that is a different determination than "**at least a minimum QoS level for operation of one or more of said first switch, said first access point, a second access point, and/or a second switch**". Specifically, Yin in the summary states:

"An embodiment of the present invention provides a system for controlling the admission of **connection requests in a network node**. The received connection request specifies a particular class of service. The system then **determines the allocated bandwidth for the specified class of service**. Available resources for the specified class of service are determined based on measured traffic flow and the **allocated bandwidth associated with the specified class of service**. The connection request is accepted by the system if the available resources are capable of supporting the requested connection."

Therefore, based on Yin's teaching of accepting a connection request based on measure traffic flow and allocated bandwidth cited above, the Applicant submits that Yin does not teach "responsive to said first messaging protocol

message, **determining at least a minimum QoS level for operation of one or more of said first switch, said first access point, a second access point, and/or a second switch**".

Thirdly, the Applicant further submits that Yin does not teach **"distributing QoS information** corresponding to said determined at least a minimum QoS level to one or more of said first switch, said first access point, said second access point and/or said second switch, using a second messaging protocol message" as recited in the amended independent claim 1. Yin instead teaches **"sending the connection request to the next node"** upon acceptance of the request, that is different than the Applicant's **"distributing QoS information** corresponding to said determined at least a minimum QoS level to at one or more of said first switch, said first access point, said second access point and/or said second switch". Specifically, Yin in col 4 lines 37-40 states:

"A Connection Admission Controller (CAC) 10 receives connection requests on input 12. Based on information received from a local database 15 and a rate monitor 16, Connection Admission Controller 10 determines whether to accept the connection request and send the request to the next node or reject the connection request and generate a connection refusal signal."

Therefore, based on the above stated reasons and citations, the Applicant has established that Yin does not teach at least the limitation of **"receiving from**

one or both of a first access point and/or a first switch, a first messaging protocol message containing quality of service (QoS) information, responsive to said first messaging protocol message, determining at least a minimum QoS level for operation of one or more of said first switch, said first access point, a second access point, and/or a second switch; and distributing QoS information corresponding to said determined at least a minimum QoS level to one or more of said first switch, said first access point, said second access point and/or said second switch, using a second messaging protocol message" as recited in the amended independent claim 1.

Accordingly, the Applicant submits that Yin cannot be used to establish a prima facie case of obviousness rejection to the amended independent claim 1. Likewise, the Applicant submits that the amended independent claims 10 and 19 are machine-readable storage and system claims that are similar in scope to the amended method claim 1 in many ways and therefore should be allowable for the same rationale established in the amended claim 1. The Applicant therefore respectfully requests that the rejection of the amended independent claims 1, 10 and 19 under 35 U.S.C. § 103(a) be withdrawn.

Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of the amended independent claims 1, 10 and 19 should such a need arise.

A (2) Argument To Rejection Of Dependent Claims 2-9, 11-18 and 20-27

Claims 2-9, 11-18 and 20-27 depend directly or indirectly from respective amended independent claims 1, 10 and 19 and therefore should be allowable for at least the same rationale of lacking the limitations established as in respective amended claims 1, 10 and 19. The Applicant respectfully requests that the rejection of dependent claims 2-9, 11-18 and 20-27 under 35 U.S.C. § 103(a) be withdrawn.

Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 2-9, 11-18 and 20-27 should such a need arise.

A (3) Arguments To Allowability Of Newly Added Claims 28-36

With regard to the newly added claims 28-36, the Applicant submits that claims 28-36 are newly added system claims with similar scope to the amended method claims 1-9 and amended system claims 19-27. Therefore, the Applicant submits that the same arguments are applicable to the newly added system claims 28-36 based on the same rationale presented to amended claims 1-9 and amended 19-27 in subsections A(1) and A(2) and respectfully submits that claims 28-36 should also be allowable. Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of newly added claims 28-36 should such a need arise.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all pending claims 1-36 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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